



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Bristol Estates  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

OPR; MNR; MNDC, MNSD; FF

### **Introduction**

This is the Landlords' application for an Order of Possession; a Monetary Order for unpaid rent, loss of revenue and two late fees; to retain the security deposit in partial satisfaction of their monetary claim; and to recover the cost of the filing fee from the Tenant.

The Landlord AD gave affirmed testimony at the Hearing.

The evidence shows that the Notice of Hearing documents and copies of the Landlords' documentary evidence were hand delivered to the Tenant on July 15, 2013, at 3:35 p.m. The Tenant acknowledged receipt of the documents by signing a copy of the Notice of Hearing.

Based on the evidence provided by the Landlords, I am satisfied that the Tenant was duly served with the Notice of Hearing documents on July 15, 2013. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in her absence.

### **Issues to be Decided**

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

### **Background and Evidence**

AD gave the following testimony and documentary evidence:

Monthly rent is \$930.00 per month, due the first day of each month. The Tenant paid a security deposit in the amount of \$450.00 and a pet damage deposit in the amount of \$450.00 on March 2, 2010. The tenancy agreement allows for a late fee of \$25.00.

On July 3, 2013, at 5:52 p.m., AD served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent, by posting the Notice on the Tenant's door at the rental unit. A proof of service document was provided in evidence, which is signed by a witness.

AD testified that the Tenant has paid a portion of the balance due to the Landlords but AD did not reinstate the tenancy, and provided the Tenant with receipts for "use and occupancy only". AD was confused about the amounts paid and the balance owed. She provided three difference accountings and stated that she may have included the late fees with her calculations.

### **Analysis**

I accept that AD served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on July 3, 2013. Pursuant to the provisions of Section 90 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenant did not pay all of the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to Section 46(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on July 16, 2013. I find that the Landlord is entitled to an Order of Possession effective 2 days after service of the Order upon the Tenant.

I am satisfied that the Tenant owes rent to the Landlords, but I find that AD did not provide sufficient evidence of the amount that is owed. Therefore, I dismissed this portion of the Landlords' application with leave to reapply.

The Landlords have been only partially successful in their application and therefore I dismiss the Landlords' application to recover the cost of the filing fee from the Tenant.

### **Conclusion**

I hereby grant the Landlord an Order of Possession effective **2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

The Landlords' application to recover the cost of the filing fee from the Tenant is **dismissed**. The remainder of the Landlord's application is **dismissed with leave to reapply**.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 16, 2013

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Residential Tenancy Branch

